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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,942	10/02/2001	Royce W. Johnson	VAC.483	8824

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ATTN: LEGAL-MANUFACTURING
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EXAMINER

TRUONG, LINH T

ART UNIT PAPER NUMBER

3761

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,942

Applicant(s)

JOHNSON, ROYCE W.

Examiner

Linh Truong

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7 and 11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, and 11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments are not considered to be persuasive. In response to Applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case because both Argenta's and Collyer's inventions are in the wound care art, and therefore, can be combined. Collyer's invention, furthermore, is drawn to an absorbent wound dressing that can simultaneously absorb wound fluids and medicate the wound area. Applicant also does not specifically claim "medicating a wound while utilizing negative pressure to remove all fluids from the wound" (2nd paragraph of p.7 of Applicant's argument). Per Applicants' argument that Gibbins does not read on claims 2-5 and 11, the examiner respectfully disagrees. Applicant also does not specifically claim: "...the negative pressure action actually causing tissues to be drawn into the microrecesses of the porous foam and achieve a much higher level of intimate contact..." (2nd paragraph of pg. 8 of Applicant's arguments). Applicant also admitted that Gibbins have a few contact points; there is no where in the Applicants' claims that the Applicant's invention

have to have many contact points. The examiner maintains the rejections in the rejection below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being anticipated by Argenta et al. WO 94120041 in view of Collyer et al. '5,973,221.

For claims 1 and 7 Argenta et al. teach a method for wound treatment comprising reepithelializing a wound surface (p.7, lines 19-24) with a negative pressure system comprising of: a porous pad 610, a tube 611 with first end in fluid communication with the pad and a second end connected to a vacuum 25, and a wound drape (612) (figure 1). Argenta et al., however, do not teach a porous pad predisposed with a wound healing factor. Pre-medicated dressings are well known in the art; it is obvious to one of ordinary skill in the art to have wound healing factors incorporated within the dressings because they come in direct contact with the wound, and therefore, would promote faster healing of wounds. For example, Collyer et al. teaches a porous pad that can be

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impregnated with antiseptic and/or other medicament (cot. 3, lines 53-56). Therefore it would be obvious to one with ordinary skill in the art to substitute the porous pad of Argenta for the porous pad of Collyer et al. for more efficient wound healing.

Claims 2-5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argenta et al. WO 94120041 in view of Collyer et al. '5,973,221 and in further view of Gibbins '6,355,858.

For claims 2-5 and 11, both Argenta et al. and Collyer et al. do not teach that the wound healing factor comprises of basic fibroblast growth factor and an anti-microbial that is an antibiotic. Since it is well known in the art that wounds, especially burns, are a destruction of skin tissue, wound healing would occur much faster when skin tissue regrows. Basic fibroblast growth factor promotes the growth of the endothelial cells of the skin; thus, it would be effective at increasing growth rate of new skin. It is also well known in the art that anti- microbial such as an antibiotic inhibit infections of wounds. Gibbins teach incorporating basic fibroblast growth factor and an anti-microbial such as streptomycin (cot. 6, line 49- col.7, line 14) as one of many active ingredients that can be incorporated or grafted onto a dressing. And since Collyer et al. teach a pad that can be incorporated with medicament, it would be obvious to one with ordinary skill in the art to provide the combined inventions of Argenta et al. and Collyer et al. with a porous pad that is predisposed with basic fibroblast growth factor and streptomycin to inhibit the growth of harmful microbials and promote faster wound healing.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh Truong whose telephone number is 571-272-4938. The examiner can normally be reached on Mondays-Fridays from 10am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Linh Truong

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Larry I. Schwartz
Supervisory Patent Examiner
Group 3700